FARAD CONTINUATION SHEET NO.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
NAGPUR BENCH, NAGPUR

Second Appeal No. 296/2001

Appeal Application No. Writ petition	District : of 200

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : Smt. V. A. Naik, J.
DATED : 5th June, 2007.

Heard the learned counsel for the parties.

Appellants are the original plaintiffs. A suit was filed by the plaintiffs against the defendants for eviction of the defendants from the suit property on the ground that the defendants had forfeited their right to be the lessees in the suit property as they had renounced their character as tenants and set up title in themselves. Both the Court have concurrently held that the plaintiffs had failed to prove that the respondents had forfeited their tenancy right by setting up title in themselves. Aforesaid judgment has been challenged in the instant second appeal.

The learned counsel for the appellants submitted that the power of attorney executed by the defendants in favour of the power of attorney holder was not a valid document as the same was executed on 30/11/1992 and the document makes a

reference to the Regular Civil Suit No. 163/1993 which was filed on 20/3/1993. According to the learned counsel for the appellants, both the Courts ought not have relied upon the oral testimony of the power of attorney holder.

The counsel for the respondents supported the judgments passed by both the Courts and submitted that plaintiffs' case was falsified by cross-examination of the plaintiff himself.

I have perused the judgment passed by the trial and appellate Courts. Both the courts have concurrently held on the appreciation of the oral evidence tendered by the plaintiffs that the plaintiffs had failed to prove that the tenants had renounced their character as a tenant and by setting up a title in themselves, had forfeited their rights as lessee. Both the Courts considered the cross-examination of the plaintiffs' witness. He admitted that the defendants never refused to pay the rent. The Courts further considered the fact that the defendants had not set up a title in themselves by the reply at Exh.12 and had merely stated therein that the plaintiff- Chandrashekhar was not the sole owner of the property. The Courts considered the fact that there was nothing in reply or any other evidence to show that the defendants had denied or disputed the title of the plaintiffs and had claimed title in themselves or in a third party. The Courts,

therefore, rightly came to the conclusion that the provisions of Section 111 (g) of the Transfer of Property Act did not apply to the facts of the present case. The submissions made on behalf of the appellants that the evidence of the power of attorney holder ought not have been considered by the Courts as the deed of power of attorney was not a genuine document, cannot be accepted as both the Courts have not considered the oral evidence of the power of attorney holder to deny the relief to the plaintiffs. The Courts have appreciated the oral evidence of the plaintiff alone, especially his cross-examination, which falsified the case of the plaintiffs so far as it related to the applicability of Section 111(g) of the Transfer of Property Act.

The findings recorded by both the Courts appear to be pure findings of facts which do not give rise to any substantial question of law. Hence second appeal is dismissed with no order as to costs.

JUDGE

RMP